

By: Nichols, et al.

S.B. No. 5

A BILL TO BE ENTITLED

AN ACT

relating to the expansion of broadband services to certain areas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 490H.002(a), Government Code, is amended to read as follows:

(a) The council is composed of one nonvoting member appointed by the state broadband development office and the following 17 voting members:

(1) two representatives of separate Internet service provider industry associations, including at least one representative of an association that primarily represents regulated small providers, as defined by Section 56.032, Utilities Code, appointed by the governor;

(2) one representative of the health information technology industry, appointed by the governor;

(3) two representatives of unaffiliated nonprofit organizations that advocate for elderly persons statewide, appointed by the governor;

(4) two representatives of unaffiliated nonprofit organizations that have a demonstrated history of working with the legislature and the public to identify solutions for expanding broadband to rural, unserved areas of this state, appointed by the governor;

(5) one representative of an agricultural advocacy

1 organization in this state, appointed by the governor;

2 (6) one representative of a hospital advocacy
3 organization in this state, appointed by the governor;

4 (7) one representative of a medical advocacy
5 organization in this state, appointed by the governor;

6 (8) one county official who serves in an elected
7 office of a county with a population of less than 35,000, appointed
8 by the governor;

9 (9) one municipal official who serves in an elected
10 office of a municipality with a population of less than 20,000
11 located in a county with a population of less than 60,000, appointed
12 by the governor;

13 (10) one representative of an institution of higher
14 education that has its main campus in a county with a population of
15 less than 60,000, appointed by the governor;

16 (11) one representative of a school district with a
17 territory that includes only counties with a population of less
18 than 60,000, appointed by the governor;

19 (12) one representative from a library association,
20 appointed by the governor;

21 (13) one member of the house of representatives,
22 appointed by the speaker of the house of representatives; and

23 (14) one state senator, appointed by the lieutenant
24 governor.

25 SECTION 2. Section [490H.006\(a\)](#), Government Code, is amended
26 to read as follows:

27 (a) The council shall:

- 1 (1) research and monitor the progress of:
- 2 (A) broadband development in unserved areas;
- 3 (B) deployment of broadband services statewide;
- 4 and
- 5 (C) purchase of broadband by residential and
- 6 commercial customers;
- 7 (2) identify barriers to residential and commercial
- 8 broadband deployment in unserved areas;
- 9 (3) study:
- 10 (A) technology-neutral solutions to overcome
- 11 barriers identified under Subdivision (2); and
- 12 (B) industry and technology trends in broadband
- 13 services; and
- 14 (4) analyze how statewide access to broadband would
- 15 benefit:
- 16 (A) economic development;
- 17 (B) the delivery of educational opportunities in
- 18 higher education and public education;
- 19 (C) state and local law enforcement;
- 20 (D) state emergency preparedness; and
- 21 (E) the delivery of health care services,
- 22 including telemedicine and telehealth.

23 SECTION 3. Subtitle F, Title 4, Government Code, is amended

24 by adding Chapter 490I to read as follows:

25 CHAPTER 490I. STATE BROADBAND DEVELOPMENT OFFICE

26 Sec. 490I.0101. OFFICE. (a) The state broadband

27 development office is established to promote the expansion of

1 access to broadband service in this state.

2 (b) The state broadband development office is
3 administratively attached to The University of Texas System. The
4 system may employ additional employees necessary for the discharge
5 of the duties of the office.

6 (c) The state broadband development office:

7 (1) is under the direction and control of the board of
8 advisors established by Section 490I.0104;

9 (2) shall promote the policies enumerated in this
10 chapter; and

11 (3) may perform any action authorized by state or
12 federal law.

13 Sec. 490I.0102. POWERS AND DUTIES. (a) The state broadband
14 development office shall:

15 (1) serve as a resource for information regarding
16 broadband service in this state;

17 (2) engage in outreach to communities regarding the
18 expansion, adoption, and affordability of broadband service and the
19 programs administered by the office; and

20 (3) serve as an information clearinghouse regarding
21 federal programs that provide assistance to local entities with
22 respect to broadband service.

23 (b) The office has the powers necessary to carry out the
24 duties of the office under this chapter, including the power to
25 enter into contracts and other necessary instruments.

26 (c) This chapter does not grant the office authority to
27 regulate broadband services or broadband service providers or,

1 except as provided by Section 490I.0107, to require broadband
2 service providers to submit information to the office.

3 Sec. 490I.0103. THRESHOLD SPEED FOR BROADBAND SERVICE. (a)
4 For the purposes of this chapter and subject to Subsection (b),
5 "broadband service" means Internet service with the capability of
6 providing:

7 (1) a download speed of 25 megabits per second or
8 faster; and

9 (2) an upload speed of 3 megabits per second or faster.

10 (b) If the Federal Communications Commission adopts
11 download or upload threshold speeds for advanced
12 telecommunications capability under 47 U.S.C. Section 1302 that are
13 higher than those specified by Subsection (a), the state broadband
14 development office by rule may require Internet service to be
15 capable of providing download and upload speeds that match those
16 federal threshold speeds in order to qualify as broadband service
17 under this chapter.

18 (c) Not later than the 60th day after the date the state
19 broadband development office adjusts the minimum download or upload
20 speeds required for Internet service to qualify as broadband
21 service under this chapter, the office shall publish the adjusted
22 minimum download and upload speeds on the comptroller's Internet
23 website.

24 Sec. 490I.0104. BOARD OF ADVISORS. (a) In this section:

25 (1) "Rural area" means a county with a population of
26 less than 100,000 that is not adjacent to a county with a population
27 of more than 350,000.

1 (2) "Urban area" means:

2 (A) a municipality with a population of more than
3 500,000; or

4 (B) a county with a population of more than 1
5 million.

6 (b) The state broadband development office board of
7 advisors is composed of 12 members, appointed as follows:

8 (1) three members appointed by the governor,
9 including:

10 (A) one member to represent the Texas Economic
11 Development and Tourism Office; and

12 (B) two members to represent nonprofit
13 corporations that work on broadband connectivity, broadband
14 adoption, and digital literacy;

15 (2) three members appointed by the lieutenant
16 governor, including:

17 (A) one member who resides in a rural area;

18 (B) one member who resides in an urban area; and

19 (C) one member to represent the public education
20 community;

21 (3) three members appointed by the speaker of the
22 house of representatives, including:

23 (A) one member who resides in a rural area;

24 (B) one member who resides in a county that:

25 (i) is adjacent to an international border;

26 (ii) is located not more than 150 miles from
27 the Gulf of Mexico; and

1 (iii) has a population of more than 60,000;

2 and

3 (C) one member to represent the health and
4 telemedicine industry;

5 (4) one member appointed by the board of regents of The
6 University of Texas System;

7 (5) one member appointed by the board of regents of the
8 Texas Tech University System; and

9 (6) one nonvoting member appointed by the state
10 broadband development office to represent the office.

11 (c) Members of the board of advisors serve at the pleasure
12 of the appointing authority for staggered two-year terms, with the
13 terms of the members described by Subsections (b)(1) and (2)
14 expiring February 1 of each odd-numbered year and the terms of the
15 members described by Subsections (b)(3), (4), (5), and (6) expiring
16 February 1 of each even-numbered year. A member may serve more than
17 one term.

18 (d) Not later than the 30th day after the date a member's
19 term expires, the appropriate appointing authority shall appoint a
20 replacement in the same manner as the original appointment.

21 (e) If a vacancy occurs on the board of advisors, the
22 appropriate appointing authority shall appoint a successor in the
23 same manner as the original appointment to serve for the remainder
24 of the unexpired term. The appropriate appointing authority shall
25 appoint the successor not later than the 30th day after the date the
26 vacancy occurs.

27 (f) The board of advisors shall meet at least once per month

1 with representatives from the state broadband development office
2 for the purpose of directing and overseeing the work of the office
3 in implementing the provisions of this chapter.

4 (g) The board of advisors may retain employees to discharge
5 the duties of the office.

6 (h) A person who is professionally affiliated with a person
7 serving as a member of the board of advisors is not eligible for
8 funding from the broadband development program established under
9 Section 490I.0107.

10 (i) The board of advisors may consult with stakeholders with
11 technical expertise in the area of broadband and telecommunication
12 technology.

13 (j) Meetings of the board of advisors are subject to Chapter
14 551.

15 Sec. 490I.0105. PARTICIPATION IN PROCEEDINGS OF FEDERAL
16 COMMUNICATIONS COMMISSION. (a) The state broadband development
17 office may monitor, participate in, and provide input in
18 proceedings of the Federal Communications Commission related to the
19 geographic availability and deployment of broadband service in this
20 state to ensure that:

21 (1) the information available to the commission
22 reflects the current status of geographic availability and
23 deployment of broadband service in this state; and

24 (2) this state is best positioned to benefit from
25 broadband service deployment programs administered by federal
26 agencies.

27 (b) The office may participate in a process established by

1 the Federal Communications Commission allowing governmental
2 entities to challenge the accuracy of the commission's information
3 regarding the geographic availability and deployment of broadband
4 service.

5 (c) The office shall establish procedures and a data
6 collection process in accordance with rules established by the
7 Federal Communications Commission that will enable the office to
8 participate in the process described by Subsection (b).

9 Sec. 490I.0106. BROADBAND DEVELOPMENT MAP. (a) The state
10 broadband development office shall develop and maintain a public
11 Internet website.

12 (b) The office shall create, update annually, and publish on
13 the office's Internet website a map classifying each designated
14 area in this state as:

15 (1) an eligible area, if fewer than 80 percent of the
16 addresses in the designated area have access to broadband service;
17 or

18 (2) an ineligible area, if 80 percent or more of the
19 addresses in the designated area have access to broadband service.

20 (c) The office by rule may determine the scope of a
21 designated area under Subsection (b).

22 (d) After creation of the initial map described in
23 Subsection (b), the office may evaluate the usefulness of the
24 standards for eligible and ineligible areas outlined in Subsection
25 (b) and, if appropriate, make a recommendation to the legislature
26 to revise the standards.

27 (e) The map must display:

1 (1) the number of broadband service providers that
2 serve each eligible area;

3 (2) for each eligible area, an indication of whether
4 the area has access to Internet service that is not broadband
5 service, regardless of the technology used to provide the service;
6 and

7 (3) each public school campus in this state with an
8 indication of whether the public school campus has access to
9 broadband service.

10 (f) The office must create, update, and publish the map in a
11 manner consistent with the Federal Communications Commission
12 mapping methodology prescribed under the Broadband DATA Act (Pub.
13 L. No. 116-130).

14 (g) Except as provided by Subsection (h), the office shall
15 use information available from the Federal Communications
16 Commission to create or update the map.

17 (h) If information from the Federal Communications
18 Commission is not sufficient for the office to create or update the
19 map, the office may request the necessary information from a
20 political subdivision or broadband service provider, and the
21 subdivision or provider may report the information to the office.
22 The office may not require a subdivision or provider to report
23 information in a format different from the format required by the
24 Federal Communications Commission mapping methodology prescribed
25 under the Broadband DATA Act (Pub. L. No. 116-130).

26 (i) Information a broadband service provider reports to the
27 office under Subsection (h) and information provided by the Federal

1 Communications Commission, if not publicly available, is
2 confidential and not subject to disclosure under Chapter 552.

3 (j) The office may contract with a private consultant or
4 other appropriate person who is not associated or affiliated with a
5 commercial broadband provider, including a local governmental
6 entity, to provide technical or administrative assistance to the
7 office for the purpose of creating or updating the map.

8 (k) The office may release information reported under
9 Subsection (h) to a contractor providing services under Subsection

10 (j). The contractor shall:

11 (1) keep the information confidential; and

12 (2) return the information to the office on the
13 earliest of the following dates:

14 (A) the date the contract expires;

15 (B) the date the contract is terminated; or

16 (C) the date the mapping project for which the
17 contractor is providing services is complete.

18 (l) A person who contracts under Subsection (j) may not
19 provide services for a broadband provider in this state before the
20 second anniversary of the last day the contract is in effect.

21 (m) The office shall establish criteria for determining
22 whether a designated area should be reclassified as an eligible
23 area or an ineligible area. The criteria must include an evaluation
24 of Internet speed test data and information on end user addresses.
25 The criteria may also include community surveys regarding the
26 reliability of Internet service, where available.

27 (n) A broadband service provider or political subdivision

1 may petition the office to reclassify a designated area on the map
2 as an eligible area or ineligible area. The office shall provide
3 notice of the petition to each broadband service provider that
4 provides broadband service to the designated area and post notice
5 of the petition on the office's Internet website.

6 (o) Not later than the 45th day after the date that a
7 broadband provider receives notice under Subsection (n), the
8 provider shall provide information to the office showing whether
9 the designated area should or should not be reclassified.

10 (p) Not later than the 75th day after the date that a
11 broadband provider receives notice under Subsection (n), the office
12 shall determine whether to reclassify the designated area on the
13 map and update the map as necessary. A determination made by the
14 office under this subsection is not a contested case for purposes of
15 Chapter 2001.

16 (q) The office is not required to create, update, or publish
17 a map under this section if the Federal Communications Commission
18 produces a map that:

19 (1) enables the office to identify eligible and
20 ineligible areas, as described by Subsection (b); and

21 (2) meets the requirements of Subsection (f).

22 Sec. 490I.0107. BROADBAND DEVELOPMENT PROGRAM. (a) The
23 state broadband development office shall establish a program to
24 award grants, low-interest loans, and other financial incentives to
25 applicants for the purpose of expanding access to and adoption of
26 broadband service in designated areas determined to be eligible
27 areas by the office under Section 490I.0106.

1 (b) The office shall establish and publish eligibility
2 criteria for award recipients. The criteria must:

3 (1) include consideration of grants and other
4 financial incentives awarded from the federal government for the
5 deployment of broadband service in a designated area;

6 (2) require that grants, loans, and other financial
7 incentives awarded through the program be used only for capital
8 expenses, purchase or lease of property, and other expenses,
9 including backhaul and transport, that will facilitate the
10 provision or adoption of broadband service; and

11 (3) prioritize eligible areas in which the lowest
12 percentage of addresses have access to broadband service.

13 (c) Notwithstanding Subsection (b)(3), the office may
14 establish eligibility criteria that take into account a cost
15 benefit analysis for awarding money to the eligible areas described
16 by that subdivision.

17 (d) The office may not:

18 (1) favor a particular broadband technology in
19 awarding grants, loans, or other financial incentives;

20 (2) award grants, loans, or other financial incentives
21 to a broadband provider that does not report information requested
22 by the office under Section 490I.0106;

23 (3) award a grant, loan, or other financial incentive
24 to a noncommercial provider of broadband service for an eligible
25 area if a commercial provider of broadband service has submitted an
26 application for the eligible area; or

27 (4) take into consideration distributions from the

1 state universal service fund established under Section 56.021,
2 Utilities Code, when deciding to award grants, loans, or other
3 financial incentives.

4 (e) An award granted under this section does not affect
5 distributions received by a broadband provider from the state
6 universal service fund established under Section 56.021, Utilities
7 Code.

8 Sec. 490I.0108. BROADBAND DEVELOPMENT FUND. (a) The
9 broadband development fund is a special fund in the state treasury
10 outside of the general revenue fund.

11 (b) The fund consists of:

12 (1) appropriations of money to the fund by the
13 legislature;

14 (2) gifts, donations, and grants, including federal
15 grants; and

16 (3) interest earned on the investment of the money in
17 the fund.

18 (c) The comptroller shall deposit to the credit of the fund
19 federal money received by the state for the purpose of broadband
20 development, to the extent permitted by state and federal law.

21 (d) Money in the fund may be appropriated only to the state
22 broadband development office for purposes of:

23 (1) administering the broadband development program;

24 (2) creating or updating the map described by Section
25 490I.0106;

26 (3) creating or updating the state broadband plan
27 under Section 490I.0109; or

1 (4) engaging in outreach to communities regarding the
2 programs administered by the office and the expansion, adoption,
3 and affordability of broadband services and equipment.

4 (e) The fund is exempt from the application of Section
5 404.071.

6 Sec. 490I.0109. STATE BROADBAND PLAN. (a) The state
7 broadband development office shall prepare a state broadband plan
8 that establishes long-term goals for greater access to and
9 affordability and adoption of broadband service in this state.

10 (b) In developing the state broadband plan, the office
11 shall:

12 (1) collaborate, to the extent possible, with state
13 agencies, political subdivisions, broadband industry stakeholders
14 and representatives, and community organizations that focus on
15 broadband services and technology access;

16 (2) give consideration to the policy recommendations
17 of the governor's broadband development council;

18 (3) favor policies that are technology-neutral and
19 protect all members of the public;

20 (4) explore state and regional approaches to broadband
21 development; and

22 (5) prioritize broadband needs related to public
23 education and state and local education agencies, including
24 agencies involved in the electronic administration of all
25 assessment instruments required under Section 39.023, Education
26 Code.

27 Sec. 490I.0110. RULEMAKING. The state broadband

1 development office may adopt rules necessary to implement this
2 chapter. Rules must be:

3 (1) proposed and adopted according to Chapter 2001;
4 and

5 (2) approved by a majority vote of the board of
6 advisors.

7 SECTION 4. Not later than November 1, 2021, each appointing
8 authority shall appoint the members of the state broadband
9 development office board of advisors as required by Section
10 490I.0104, Government Code, as added by this Act. The board of
11 advisors may not take action until a majority of the members have
12 taken office.

13 SECTION 5. Not later than the first anniversary of the
14 effective date of this Act, the state broadband development office
15 established by Section 490I.0101, Government Code, as added by this
16 Act, shall prepare the initial state broadband plan required by
17 Section 490I.0109, Government Code, as added by this Act.

18 SECTION 6. (a) The state broadband development office
19 established by Section 490I.0101, Government Code, as added by this
20 Act, shall publish the map required by Section 490I.0106,
21 Government Code, as added by this Act, on the office's Internet
22 website not later than January 1, 2023.

23 (b) Not later than September 1, 2022, the office shall
24 publish on the office's Internet website:

25 (1) a map created by the Federal Communications
26 Commission that displays the number of broadband service providers
27 that serve each designated area; or

1 (2) a link to a map described by Subdivision (1) of
2 this subsection.

3 (c) For the purpose of administering the broadband
4 development program established by Section 490I.0107, Government
5 Code, as added by this Act, the office shall use a map described by
6 Subsection (b) of this section to determine whether an area is
7 eligible until the office publishes the map required by Section
8 490I.0106, Government Code, as added by this Act.

9 SECTION 7. This Act takes effect immediately if it receives
10 a vote of two-thirds of all the members elected to each house, as
11 provided by Section 39, Article III, Texas Constitution. If this
12 Act does not receive the vote necessary for immediate effect, this
13 Act takes effect September 1, 2021.